

Overbid procedure (*if any*):

Not subject to overbid.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

N/A - No hearing will be held unless one is requested by a party opposing the Motion.

Contact person for potential bidders (*include name, address, telephone, fax and/or email address*):

N/A. Not subject to overbid.

Date: 11/13/2019

1 Jeffrey I. Golden, State Bar No. 133040
jgolden@wglp.com
2 Beth E. Gaschen, State Bar No. 245894
bgaschen@wglp.com
3 **WEILAND GOLDEN GOODRICH LLP**
650 Town Center Drive, Suite 600
4 Costa Mesa, California 92626
Telephone 714-966-1000
5 Facsimile 714-966-1002

6 Special Counsel for Chapter 7 Trustee
Jeremy W. Faith
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **NORTHERN DIVISION**

11 In re
12 ROBERT HESSELGESSER, M.D.,
13 Debtor.

Case No. 9:17-bk-11579-DS
Chapter 7

**NOTICE OF CHAPTER 7 TRUSTEE'S
MOTION FOR ORDER AUTHORIZING
SALE OF PROPERTY OF THE ESTATE
PURSUANT TO 11 U.S.C. § 363(b)**

[No Hearing Required Pursuant to Local
Bankruptcy Rule 9013-1(o)]

18 **TO ALL INTERESTED PARTIES:**

19 **PLEASE TAKE NOTICE** that Jeremy W. Faith, the duly appointed, qualified and
acting chapter 7 trustee ("Trustee") for the bankruptcy estate ("Estate") of Robert
20 Hesselgesser, M.D. ("Debtor"), has filed a *Motion for Order: (1) Authorizing Sale of*
21 *Property of the Estate Pursuant to 11 U.S.C. § 363(b); and (2) Approving Buyer as Good*
22 *Faith Purchaser Pursuant to 11 U.S.C. § 363(m)* ("Motion"). By the Motion, the Trustee
23 seeks to sell ten shares of stock owned by the Debtor pursuant to the terms of his former
employment for a purchase price of \$5,000. The Trustee believes the purchase price
24 represents the fair market value and the proposed sale is reasonable and in the best
interest of the Estate.

25 **Background**

26 On August 31, 2017, an involuntary chapter 7 petition was filed against Robert
Hesselgesser, M.D. by petitioning creditors Charles Aarni, Charles W. Aarni Employee
27 Profit Sharing Plan, Allan Chodor, Mary and Marvin Owen 1993 Trust and The McGowan
Exemption Trust dated 03/26/2003 (together, the "Petitioning Creditors"). The order for
28

1 relief was entered on December 4, 2017. Jeremy W. Faith was appointed chapter 7
2 trustee on December 14, 2017.

3 The Debtor, a physician, previously was employed by Coastal Radiation Oncology
4 Medical Group ("Coastal") under the terms of the shareholders agreement (the
5 "Shareholders Agreement"). Prior to the bankruptcy filing, the Debtor voluntarily resigned
6 from his position as a direct and officer of Coastal. The Debtor's last day of employment
7 with Coastal was December 31, 2017. Pursuant to the terms of the Shareholders
8 Agreement dated February 16, 2006, as amended, the Debtor (now the Trustee) is
9 required to sell the Debtor's ten (10) shares of Coastal (the "Shares") to Coastal as a
10 result of the Debtor's voluntarily resignation. Under Section 4.3.2 of the Shareholders
11 Agreement, the purchase price of the Shares is to be determined in accordance with the
12 value of Coastal as agreed by the shareholders on an annual basis, subject to any
13 applicable discount based upon the Shareholders Agreement. For 2018, the agreed value
14 of the Shares is \$5,000.

15 Terms of the Proposed Sale

16 A true and correct copy of the Stock Repurchase Agreement entered into between
17 the Trustee and Coastal is attached as Exhibit "1" to the Motion. The salient terms of the
18 sale provide:

- 19 1. Bankruptcy Court Approval. The Stock Repurchase Agreement is subject to
20 Bankruptcy Court Approval and will become effective and binding the first
21 business day after the order approving the Stock Repurchase Agreement
22 becomes a Final Order.
- 23 2. Repurchase of the Shares. The Trustee agrees to surrender and transfer
24 the Shares to Coastal and Coastal agrees to repurchase the Shares from
25 the Trustee.
- 26 3. Consideration. The total purchase price for the Shares is \$5,000 (the
27 "Purchase Price"). The full amount of the Purchase Price shall be paid to
28 the Trustee on the Closing Date. Coastal has agreed to pay the Trustee the
full agreed value for the Shares, even though Coastal asserts it is entitled to
discount the purchase price of the Shares based upon the terms of the
Shareholders Agreement.
4. Closing and Withdrawal from Coastal. The actual transfer and surrender of
the Shares to Coastal and the payment of the Purchase Price ("Closing")
shall take place at the office of Coastal on the effective date, or at such other
mutually convenient place and time as is agreed upon by the parties. The
Debtor's relationship with Coastal, as a shareholder, director and officer
terminated as of December 31, 2017. The Trustee acknowledges and
agrees that the Trustee, the Estate, and the Debtor are owed no further
funds from Coastal, as confirmed by the order of the Court entered
November 8, 2018.
5. Deliveries at Closing. At Closing, Coastal will deliver the Purchase Price
and the Trustee shall deliver the Certificates representing the Shares
accompanied by a stock powers duly executed in blank or a Certificate of
Lost Share Certificate in a form acceptable to Coastal.

6. Overbid. The sale of the Shares is not subject to overbid.
7. Releases. Mutual releases as set forth in the Stock Repurchase Agreement.

Summary of Bases for Relief

Here, the proposed transaction has a legitimate business justification and is in the best interest of the Estate as the sale will generate proceeds for the benefit of the creditors of the Estate. The Agreement requires that the Shares be sold for \$5,000, and there is no ready market for the Shares – other than Coastal - because the only other shareholders are Coastal physician-employees. The Purchase Price is the agree-upon value of the Shares. In light of the nature of the Shares, no other potential purchaser exists. Accordingly, the Trustee believes that the proposed sale is fair and reasonable and within the proper exercise of his business judgment. The Agreement was negotiated in good faith and at arms-length. Each of the parties was represented by independent counsel and they have no prior relationship.

In the instant case, the Buyer is buying in good faith and has offered to pay fair value for the Shares. The anticipated sale has been negotiated with Coastal, which is represented by its own counsel, in “arm’s-length” discussions. To the Trustee’s knowledge, Coastal is not related in any way to the Trustee or the Trustee’s counsel. Moreover, the sale will be conducted in a commercially reasonable manner following appropriate notice. Based on such facts and circumstances, the Trustee believes that this Court can properly determine Coastal as a “good faith purchaser” pursuant to 11 U.S.C. § 363(m).

Summary of Relief Sought by the Motion

By the Motion, the Trustee seeks entry of an order providing for the following relief:

1. Granting the Motion;
2. Authorizing the Trustee to sell the Shares to Coastal pursuant to 11 U.S.C. § 363(b) and determining that Coastal is entitled to the protections of § 363(m);
3. Approving the terms of the Stock Repurchase Agreement as attached hereto as Exhibit 1;
4. Authorizing the Trustee to execute any documents or take any actions reasonably necessary to effectuate the terms of the Sale;
5. Finding that notice of the Motion and of the Sale is proper and adequate; and
6. Granting other and further relief as this Court may deem just and proper.

A copy of the Motion is on file with the Court and available by contacting the Trustee’s counsel.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 9013-1(o)(1), any party objecting to the Motion may request a hearing on the Motion by filing a written “Objection and Request for Hearing.” The deadline for filing and serving a written opposition and request for a hearing is **14 days** after the date of service of this notice,

1 plus 3 additional days if you were served by mail, electronically, or pursuant to F.R.Civ.P.
2 5(b)(2)(D), (E), or (F). You must serve a copy of the "Objection and Request for Hearing"
3 on the Trustee's counsel at the address above and on the United States Trustee. Failure
4 to timely file and serve the "Objection and Request for Hearing" may result in the Court's
5 entry of an order approving the Motion.

6 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(h)
7 provides the following: "Papers not timely filed and served may be deemed by the Court to
8 be consent to the granting or denial of the motion, as the case may be."

9 DATED: November 13, 2019

WEILAND GOLDEN GOODRICH LLP

By: /s/ Beth E. Gaschen

BETH E. GASCHEN

Special Counsel for Chapter 7 Trustee

Jeremy W. Faith

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

650 Town Center Drive, Suite 600, Costa Mesa, California 92626

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING SALE OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(b)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **November 14, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **November 14, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **November 14, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Deborah Saltzman, 255 E. Temple Street, Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



November 14, 2019

Kelly Adele

Date

Printed Name

Signature

Robert D. Hesselgesser, MD (HESS01.0001)

**9:17-bk-11579-PC
Master Mailing List**

Robert Hesselgesser
1731 Schoolhouse Circle
Thousand Oaks, CA 91362-4257
Debtor

Bank of the Sierra
c/o Powell Slater, LLP
7522 N. Colonial Ave., Suite 100
Fresno, CA 93711-5874

United States Attorney's Office
Federal Building, Room 7516
300 North Los Angeles Street
Los Angeles, CA 90012

Roy Butera
2238 Marshbrook Rd.
Thousand Oaks, CA 91361

United States Department of Justice
Ben Franklin Station
P.O. Box 683
Washington, DC 20044

Cardinal Collection Educational
Foundation
c/o Martin Logies
1723 Karamenos Drive
Sunnyvale, CA 94087

Mike Yamaski
2168 South Atlantic Boulevard, #338
Monterey Park, CA 91754

Allan Chodor
9010 Corbin Avenue
Northridge, CA 91326

~~Charles W. Aarni (PSP)~~
~~49 Silver Springs Drive~~
~~Rolling Hills Estates, CA 90274~~
ADDRESS UPDATED 10/22/18

Allan B. Chodor
9010 Corbin Avenue, Suite 6
Northridge, CA 91324-3356

Charles W. Aarni (PSP)
309 Warren Street, Apt. 5
Taft, CA 93268

Coastal Radiation Oncology Medical
Group, Inc.
100 Casa Street
San Luis Obispo, CA 93405

~~Law Offices of Franklin S. Adler (JC)~~
~~424 South Beverly Drive~~
~~Beverly Hills, CA 90212-4414~~

Coastal Radiation Oncology Medical
Group, Inc.
316 S. Stratford Avenue, Suite C
Santa Maria, CA 93454-5908

Law Offices of Franklin S. Adler (JC)
5262 Brooke Ridge Drive
Dunwoody, GA 30338

Lawrence L. Cohen and Cynthia B.
Cohen
PO Box 331
Chiloquin, OR 97624

Michelle Assayag, Esq. (UB)
Assayag Mauss
2915 Red Hill Avenue, Suite A200
Costa Mesa, CA 92626

Sandra Lee Dawson (JC)
1468 Carmen Drive
Simi Valley, CA 93065

Joshua Duffy, Esq. (UB)
Assayag Mauss
2915 Red Hill Avenue, Suite A200
Costa Mesa, CA 92626

Hamata Estate
631 Catalpa Street
PO Box 436
North Bend, NE 68649

Robert I. Fishburn
626 Al Hil Drive
San Luis Obispo, CA 93405

Laura Ann Hartz (JC)
1468 Carmen Drive
Simi Valley, CA 93065

Gerald M. Fisher, Esq.
Oceans House, Suite 200
755 Havana Avenue
Long Beach, CA 90804

Harlan Helvey
221 Moonstone
Manhattan Beach, CA 90266

Franchise Tax Board
State of California
PO Box 942840
Sacramento, CA 94240-0000

Lannie Helvey
PO Box 3400
Manhattan Beach, CA 90266

Franchise Tax Board
Bankruptcy Section
MS: A-340 – PO Box 2952
Sacramento, CA 95812-2952

Garry Hesselgesser
119 Via Zurich
Newport Beach, CA 92663

Larry Hesselgesser
177 West Wells Street
San Gabriel, CA 91776

Anna Greenstin, Esq.
WFBM, LLP
One City Blvd., Fifth Floor
Orange, CA 92868-3677

Judy Mann Hillis
Jon Hillis
3620 Dragonfly
Thousand Oaks, CA 91360

Paul Hackett
3311 James Drive
Carlsbad, CA 92008

Judy Mann Hillis
Jon Hillis
3620 Dragonfly E203
Thousand Oaks, CA 91360

~~Lawrence C. Hall, Esq.~~
~~The Hall Law Corporation~~
~~200 N. Sepulveda Blvd., Suite 300~~
~~El Segundo, CA 90245-5626~~
MAIL RETURNED 04/06/19

Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346

Lawrence C. Hall, Esq.
The Hall Law Corporation
6242 Westchester Parkway, #200
Los Angeles, CA 90045-4853

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Law Offices of Burton C. Jacobson (JC)
424 South Beverly Drive
Beverly Hills, CA 90212-4402

Martin Logies
1723 Karamenos Drive
Sunnyvale, CA 94087

Katharine Javurek
1990 El Monte Drive
Thousand Oaks, CA 91362

Los Angeles Federal Credit Union
PO Box 53032
Los Angeles, CA 90053-0032

John A. Kaniewski
WFBM, LLP
One City Blvd West, Fifth Floor
Orange, CA 92868-3677

Larry Meyer
15024 Marble Drive
Sherman Oaks, CA 91403

Michael Kinworthy
80-555 Via Talavera
La Quinta, CA 92253

Alan M. Mirman, Esq. (PWB)
Mirman, Bubman & Nahmias, LLP
21860 Burbank Boulevard, Suite 360
Woodland Hills, CA 91367

Casey S. Knauss
3807 East Park
Camarillo, CA 93012

J. Todd Mirolla, Esq.
Andre, Morris & Buttery
1102 Laurel Lane
San Luis Obispo, CA 93401

Elizabeth E. Knauss
345 Rimrock Road
Thousand Oaks, CA 91361

~~Newport Coastal Properties
c/o Gary Hesselgesser
3535 E. Pacific Coast Highway #121
Corona del Mar, CA 92625~~

Walter W. Krauss
PO Box 3727
Thousand Oaks, CA 91359

**UPDATED VIA PHONE CALL ON
1/29/18
MAIL RETURNED 02/01/18**

Lawrence H. Levine
189 East Lake Shore Drive, Unit 16
Chicago, IL 60611

Newport Coastal Properties
c/o Gary Hesselgesser
120 Tustin Ave., Suite C1055
Newport Beach, CA 92663

~~Jesse Lee
1916 Seabreeze Street
Newbury Park, CA 91320~~
MAIL RETURNED ON 01/29/18

Richard Orozco and Karen Orozco
24822 Highway 6 and 19
Cambridge, PA 16403

John Lee, MD
2078 Stonehill Circle
Thousand Oaks, CA 91360

Hanno T. Powell, Esq. (BofS)
Powell Slater, LLP
7522 N. Colonial Ave., Suite 100
Fresno, CA 93711

LoanMe
PO Box 5645
Orange, CA 92863

Todd Ringstad, Esq.
4343 Von Karman Avenue
Newport Beach, CA 92660-2099

Monica Welikala
14310 Laurel Lane
Moorpark, CA 93021

Particia Scarfone-Sulz (JC)
41963 Bonita Drive
Palmdale, CA 93551

Heather Wayne
4827 Hortonrest Court
Summerville, SC 29485

John Schlaerth (PSP)
3244 Villa Highlands Drive
Pasadena, CA 91107

Scott A. Wayne
209 Whispering Winds Drive
Lexington, SC 29072

Jeri Schoenfeld
11933 Ash Street
Studio City, CA 91604

~~Stephen A. Wayne
1402 Plantation Drive
Simpsonville, SC 29681~~
MAIL RETURNED 09/24/19

Select Portfolio Servicing, Inc. SPS
PO Box 65250
Salt Lake City, UT 84165-0250

~~Hannah K. Yang
321 10th Avenue, Unit 2204
San Diego, CA 92101~~
MAIL RETURNED 09/13/19

Allen Shirley
5263 Miembro
Laguna Woods, CA 92637

Pamela J. Zylstra, Esq.
Broker & Associates
18111 Von Karman Avenue, Suite 460
Irvine, CA 92612

John Skirtich
10140 Laurens Drive N.E.
Bolivar, OH 44612

Charles W. Aarni Profit Sharing Pla
309 Warren Street, Apt. 5
Taft, CA 93268-2500

Kelly and Dale Spears
435 Broome Road
Sumrall, MS 39482

Grobstein Teeple LLP
6300 Canoga Avenue, Suite 1500W
Woodland Hills, CA 91367-2555

Rene Topete (Special Trust)
Rene Topete Special Needs Trust
PO Box 3727
Thousand Oaks, CA 91359

JPMorgan Chase Bank, National
Association
c/o McCarthy & Holthus, LLP
1770 Fourth Avenue
San Diego, CA 92101-2607

~~United States Trustee
128 E. Carillo Street
Santa Barbara, CA 93101~~
MAIL RETURNED 09/14/19

Robert Warren
2180 Orlando Road
San Marino, CA 91108

MUFG Union Bank, N.A.
c/o Assayag Mauss, LLP
2915 Red Hill Avenue, Suite A200
Costa Mesa, CA 92626-7978

Mary and Marvin Owen 1993 Trust
4419 Wilderness Trace
Owensboro, KY 42303-2190

The McGowan Exemption Trust dated
03/26/2003
3143 Scottys Terrace
Simi Valley, CA 93063

~~AAIAI, Incorporated~~
~~3301 James Drive~~
~~Carlsbad, CA 92008~~
MAIL RETURNED 03/31/19

American Estate & Trust LC
FBO David Rushs IRA
6900 Westcliff Drive, #603
Las Vegas, NB 89145-0199

American Estate & Trust LC
FBO Harry Barths IRA
6900 Westcliff Drive, #603
Las Vegas, NV 89145-0199

Assurance Architects Insurance
Agency Incorporated
3311 James Drive
Carlsbad, CA 92008-1967

Bret Hackett
Rosie, Ruby Rose & Van Hackett
1348 Dick Lake Road
South Lake Tahoe, CA 96150-8365

Bret and Roseanne Hackett
1348 Dick Lake Road
South Lake Tahoe, CA 96150-8365

Casey S. Knauss
PO Box 3727
Thousand Oaks, CA 91359-0727

~~Charles Aarni~~
~~19 Silver Springs Drive~~
~~Rolling Hills Estate, CA 90274-2312~~
MAIL FORWARDED 09/12/19

Charles Aarni
309 Warren St., Apt. 5
Taft, CA 93268-2500

~~Charles W. Aarni~~
~~19 Silver Springs Drive~~
~~Rolling Hills Estate, CA 90274-2312~~
MAIL FORWARDED 09/12/19

Charles Aarni
309 Warren St., Apt. 5
Taft, CA 93268-2500

~~Charles W. Aarni Employee Profit~~
~~Sharing Plan~~
~~19 Silver Springs Drive~~
~~Rolling Hills Estate, CA 90274-2312~~
MAIL RETURNED 09/17/19

~~Chelsea Watkins~~
~~6080 Center Drive, Suite 600~~
~~Los Angeles, CA 90045-1540~~
MAIL RETURNED 04/03/19

Chelsea Watkins
PO Box 661888
Los Angeles, CA 90066-8888

Citi Mastercard
PO Box 6500
Sioux Falls, SC 57117-6500

Coastal Radiation Oncology Medical
Group
316 S. Stratford Avenue, Suite C
Santa Maria, CA 93454

~~David M. Marshak~~
~~200 S. Molino, #6~~
~~Pasadena, CA 91016~~
MAIL RETURNED 04/11/19

David Marshak
346 Highland Place
Monrovia, CA 91016-1521

David Rush – IRA
AM. Estate/Trust FBO David Rush
6900 Westcliff Drive, #603
Las Vegas, NV 89145-0199

Edmund Colin Kyffin, Trustee
Theodore and Lois Kyffin Trust 1987
748 Morelia Court
Thousand Oaks, CA 91360-2580

Elizabeth E. Knauss
PO Box 3727
Thousand Oaks, CA 91359-0727

Esmond Chan
1128 Orinda Way
Salinas, CA 93901-1081

Estate of John V. Shields, the Survivor'
c/o A. Scott Brown
3155 Old Conejo Road
Thousand Oaks, CA 91320-2151

Eugene Ahn, MD
18926 San Jose Street
Porter Ranch, CA 91326-3322

Franchise Tax Board
Bankruptcy Section MS A340
PO Box 2952
Sacramento, CA 95812-2952

Hannah K. Yang
PO Box 3727
Thousand Oaks, CA 91359-0727

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Jane C. Hesselgesser
1731 Schoolhouse Circle
Westlake Village, CA 91362-4257

Jeffrey W. Broker, Esq.
Broker & Associates
18111 Von Karman Avenue, Suite 460
Irvine, CA 92612-7152

Jesse Lee
2398 Moberly Court
Thousand Oaks, CA 91360-1951

Joe Maloof
Personal & Confidential
3816 Ocean View Blvd.
Montrose, CA 91020-1621

John Schlaerth
3244 Villa Highland Drive
Pasadena, CA 91107-1538

Jorge M. Fuentes
2114 Crescent Avenue
Montrose, CA 91020-1202

Judy Mann Hillis & Jon Hillis
3620 Dragonfly Drive
Thousand Oaks, CA 91360

Larry Brasler
2637 Townsgate Road, #150
Westlake Village, CA 91361-2717

Law Offices of Gerald Fischer
1811 Von Karman, Suite 460
Irvine, CA 92612-7152

~~Leonard Paul Hackett, Jr.
3301 James Drive
Carlsbad, CA 92008~~

MAIL RETURNED 03/31/19

Leonard Paul Hackett, Jr.
3311 James Drive
Carlsbad, CA 92008

LoanMe, Inc.
c/o Weinstein & Riley, PS
2001 Western Avenue, Suite 400
Seattle, WA 98121-3132

MUFG Union Bank, N.A.
c/o Weinstein & Riley, PS
2001 Western Avenue, Suite 400
Seattle, WA 98121-3132

MUFG Union Bank, N.A.
c/o Byron Mauss
Assayag Mauss, LLP
2915 Red Hill Avenue, Suite A200
Costa Mesa, CA 92626-7978

McGowan Exemption Trust 1/26/03
Lynn McGowan, Trustee
3134 Scottys Terrace
Simi Valley, CA 93063-1010

Millennium Trust Company, LLC
Custodian FBO Jorge M. Fuentes IRA
2001 Spring Road, Suite 700
Oak Brook, IL 60523-1890

Newport Coastal Properties 401K Plan
Attn: Gary Hesselgesser
120 Tustin Avenue, Suite C-1055
Newport Beach, CA 92663-4729

Noteholders/Super98, LLC
PO Box 7389
Westlake Village, CA 91359-7389

Order of Merchants LLC
1107 Venice Blvd., Unit 205
Venice, CA 90291-5986

Order of Merchants
Attn: Zachary James Corzine
3651 Lindell Road, Suite D621
Las Vegas, NV 89103-1254

~~Pacific Coast Properties DBPP
Attn: Gary Hesselgesser
2001 Kings Road
Newport Beach, CA 92663-5006~~
MAIL RETURNED 09/19/19

Pacific Western Bank
Mirman Bubman & Nahmias
Attn: Alan Mirman
21860 Burbank Blvd., Suite 360
Woodland Hills, CA 91367-7406

~~Parker-Miller Partnership
Attn: Patricia Miller
502 Meadowlark Lane
Oldtown, ID 83822-9240~~
ADDRESS UPDATED 04.08.19

~~Parker-Miller Partnership
Attn: Marcia Parker
502 Meadowlark Lane
Oldtown, ID 83822-9240~~
ADDRESS UPDATED 04.08.19

Parker-Miller Partnership
9684 Shadow Creek Trail
Hearne, TX 77859

Robert S. Warren
2180 Orlando Road
San Marino, CA 91108-1328

Robert Stephen Warren
2180 Orlando Road
San Marino, CA 91108-1328

Sandra Lee Dawson
c/o Sevan Gorginian, Esq.
Law Office of Sevan Gorginian
450 N. Brand Blvd., Suite 600
Glendale, CA 91203-2349

Scott Brown
DK Law Group LLP
3155 Old Conejo Road
Thousand Oaks, CA 91320-2151

Stephen Wayne
110 William Owens Way
Greer, SC 29651-5069

Super98, LLC
Attn: Officer or Director
PO Box 7389
Westlake Village, CA 91359-7389

Survivors Trust/Shields Family Trust
Dated June 9, 2014
DK Law Group
3155 Old Conejo Road
Thousand Oaks, CA 91320-2151

The McGowan Exemption Trust dated
03/26/2003
c/o Lynne McGowan, Trustee
3143 Scottys Terrace
Simi Valley, CA 93063

Thomas Hand
36232 42nd Street East
Palmdale, CA 93552-6209

United States Trustee (ND)
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017-3560

Ventura County Tax Collector
Attn: Bankruptcy
800 S. Victoria Avenue
Ventura, CA 93009-0001

~~Wayne Living Trust 10/29/1996~~
~~Attn: Stephen Wayne, Trustee~~
~~1402 Plantation Drive~~
~~Simpsonville, SC 29681-4657~~
MAIL FORWARDED 09/12/19

Pacific Western Bank
Attn: Joseph Catmull, SVP
3027 Townsgate Road, Suite 300
Westlake Village, CA 91361

Wayne Living Trust 10/29/1996
Attn: Stephen Wayne, Trustee
110 William Owens Way
Greer, SC 29651-5069

Zachary James Corzine
1107 Venice Blvd., Unit 205
Venice, CA 90291-5986

Charles Aarni
309 Warren Street, Apt. 5
Taft, CA 93268-2500

Colin Kyffin
748 Morelia Ct.
Thousand Oaks, CA 91360-2580

Broker & Associates PC
18111 Von Karman, Suite 460
Irvine, CA 92612-7152

Cardinal Collection Educational
1723 Karameos Drive
Sunnyvale, CA 94087-5227

Barbara J. Roberts
387 14th Avenue
San Francisco, CA 94118-2804

Larry Brasler
2637 Townsgate Road #150
Westlake Village, CA 91361

Kevin J. Hoyt
Estes & Hoyt, APC
550 West C Street, Suite 530
San Diego, CA 92101
Counsel for Larry Brasler

Pacific Western Bank
Attn: Corporate Officer/ Director
9701 Wilshire Boulevard, Suite 101
Beverly Hills, CA 90212

Bank of America
Attn: Corporate Officer/ Director
555 California Street
San Francisco, CA 94104

Bank of the Sierra
Attn: Corporate Officer/ Director
90 North Main Street
Porterville, CA 93257

Bank of the Sierra
Attn: Corporate Officer/ Director
86 N. Main Street
Porterville, CA 93257

Citibank, National Association
Attn: Corporate Officer/Director
701 East 60th Street North
Sioux Falls, SD 57104

JPMorgan Chase Bank,
National Association
Attn: Corporate Officer/ Director
1111 Polaris Parkway
Columbus, OH 43240

MUFG Union Bank,
National Association
Attn: Corporate Officer/ Director
400 California Street
San Francisco, CA 94104

MUFG Union Bank, N.A.
c/o Weinstein & Riley, PS
2001 Western Avenue, Suite 400
Seattle, WA 98121

Union Bank
Attn: Mr. Bradley Starr
21700 Oxnard Street, 2nd Floor
Woodland Hills, CA 91367

Chase
Attn: Corporate Officer/ Director
PO Box 78420
Phoenix, AZ 85062-8420

Bank of America
Attn: Corporate Officer/Director
PO Box 982238
El Paso, TX 79998-2238

Citibank
Attn: Corporate Officer/Director
PO Box 6500
Sioux Falls, SD 57117-6500

JP Morgan Chase & Co.
Attention: James Dimon, CEO
270 Park Avenue, 48th Floor
New York, NY 10017-7924

Wells Fargo Bank, N.A.
Attn: Corporate Officer/Director
PO Box 51193
Los Angeles, CA 90051-5493

Wells Fargo Bank, N.A.
Wells Fargo Card Services
Attn: Corporate Officer/Director
PO Box 10438, MAC F8235-02F
Des Moines, IA 50306-0438

Wells Fargo Bank, N.A. Wells Fargo
Card Ser
Attn: Corporate Officer/Director
PO Box 10438, MAC F8235-02F
Des Moines, IA 50306-0438

Electronic Mail Notice List

Jeffrey W Broker jbroker@brokerlaw.biz
Jeremy W. Faith (TR) Trustee@MarguliesFaithlaw.com,
C118@ecfcbis.com;Helen@MarguliesFaithLaw.com;leedowding@gmail.com
Beth Gaschen bgaschen@wgllp.com,
kadele@wgllp.com;vrosales@wgllp.com;cbmeeker@gmail.com;cyoshonis@wgllp.com
Jessica L Giannetta jessicag@powellandpool.com
Jeffrey I Golden jgolden@wgllp.com,
kadele@wgllp.com;vrosales@wgllp.com;cbmeeker@gmail.com
Sevan Gorginian sevan@gorginianlaw.com,
notices@nextchapterbk.com;serj@gorginianlaw.com
Alexander K Lee ecfcacb@aldridgepite.com, akI@ecf.courtdrive.com
Nancy L Lee bknotice@mccarthyholthus.com, nlee@ecf.courtdrive.com
Byron B Mauss efilings@amlegalgroup.com
Bruce P. Needleman attybpn@aol.com
Scott H Noskin snoskin@mbnlawyers.com, aacosta@mbnlawyers.com
Hanno T Powell hpowell@powellslater.com, lenrico@powellslater.com
Todd C. Ringstad becky@ringstadlaw.com, arlene@ringstadlaw.com
Joseph M Sholder sholder@g-tlaw.com
Creighton A Stephens casesq@verizon.net
Kevin M. Sullivan
United States Trustee (ND) ustpreion16.nd.ecf@usdoj.gov
Pamela Jan Zylstra zylstralaw@gmail.com

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

650 Town Center Drive, Suite 600, Costa Mesa, California 92626

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **November 14, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **November 14, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **November 14, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Deborah Saltzman, 255 E. Temple Street, Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 14, 2019

Date

Kelly Adele

Printed Name



Signature

Electronic Mail Notice List

Jeffrey W Broker jbroker@brokerlaw.biz
Jeremy W. Faith (TR) Trustee@MarguliesFaithlaw.com,
C118@ecfcbis.com;Helen@MarguliesFaithLaw.com;leedowding@gmail.com
Beth Gaschen bgaschen@wglp.com,
kadele@wglp.com;vrosales@wglp.com;cbmeeker@gmail.com;cyoshonis@wglp.com
Jessica L Giannetta jessicag@powellandpool.com
Jeffrey I Golden jgolden@wglp.com, kadele@wglp.com;vrosales@lwglp.com;cbmeeker@gmail.com
Sevan Gorginian sevan@gorginianlaw.com, 2486@notices.nextchapterbk.com
Alexander K Lee ecfcacb@aldridgepite.com, akl@ecf.courtdrive.com
Nancy L Lee bknotice@mccarthyholthus.com, nlee@ecf.courtdrive.com
Byron B Mauss efilings@amlegalgroup.com
Bruce P. Needleman attybnp@aol.com
Scott H Noskin snoskin@mbnlawyers.com, aacosta@mbnlawyers.com
Hanno T Powell hpowell@powellslater.com, lenrico@powellslater.com
Todd C. Ringstad becky@ringstadlaw.com, arlene@ringstadlaw.com
Joseph M Sholder sholder@g-tlaw.com
Creighton A Stephens casesq@verizon.net
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United States Trustee (ND) ustpregion16.nd.ecf@usdoj.gov
Pamela Jan Zylstra zylstralaw@gmail.com